READ AND LANIADO, LLP

ATTORNEYS AT LAW

25 EAGLE STREET
ALBANY, NEW YORK 12207-1901

(518) 465-9313 MAIN
(518) 465-9315 FAX
WWW.READLANIADO.COM

KEVIN R. BROCKS
DAVID B. JOHNSON
SAM M. LANIADO

KONSTANTIN PODOLNY

RICHARD C. KING
HOWARD J. READ
OF COUNSEL

Via Electronic Delivery

May 25, 2012

Hon. Jaclyn A. Brilling
Secretary
State of New York Board on Electric
Generation Siting and the Environment
Three Empire State Plaza
Albany, NY 12223-1350

RE: Case 12-F-0036 – In the Matter of the Rules and Regulations of the Board on Electric Generation Siting and the Environment, contained in 16 NYCRR, Chapter X, Certification of Major Electric Generating Facilities

Dear Secretary Brilling:

In accordance with the Notice of Proposed Rulemaking issued March 27, 2012, attached please find the comments of the Independent Power Producers of New York, Inc. on the proposed Article 10 regulations. Feel free to contact the undersigned should you have any questions.

Respectfully submitted

READ AND LANIADO, LLP
Attorneys for the Independent Power
Producers of New York, Inc.

By: 
Sam M. Laniado

Attachment
cc: Gavin Donohue
Radmila Miletich

STATE OF NEW YORK BOARD ON ELECTRIC GENERATION SITING AND THE ENVIRONMENT

In the Matter of the Rules and Regulations of the Board on Electric Generation Siting and the Environment, contained in 16 NYCRR, Chapter X, Certification of Major Electric Generating Facilities, Issued March 27, 2012.

Case 12-F-0036

COMMENTS OF THE INDEPENDENT POWER PRODUCERS OF NEW YORK, INC. ON THE PROPOSED REGULATIONS TO IMPLEMENT ARTICLE 10 OF THE PUBLIC SERVICE LAW

INTRODUCTION

The Independent Power Producers of New York, Inc. ("IPPNY") hereby provides the following comments concerning the captioned proposed regulations ("Proposed Regulations"). IPPNY is a not-for-profit trade association representing the independent power industry in New York State. Its members include nearly 100 companies involved in the development and operation of electric generating facilities and the marketing and sale of electric power in New York. IPPNY's members include suppliers and marketers that participate in the NYISO's energy, capacity and ancillary services markets. IPPNY member companies produce over 75 percent of New York's electric power.

It is fair to say that IPPNY's members[1] will be directly and uniquely affected by the implementation of the Proposed Regulations as many of its members will consider whether or not to develop power plants in New York State. The comments track the sequence of the Proposed Regulations to the extent practicable, acknowledging that there may be overlap with other regulations.

COMMENTS

Section 1000.2(ae) – The proposed definition provides in part that an applicant that partners with an industrial development agency or public authority "for the acquisition of any land for the facility or the Interconnections has an indirect power of eminent domain. . .," and, therefore, would not qualify as a "private facility applicant." Lacking that status subjects the applicant to presenting extensive information on reasonable and available alternate location sites that will be costly and delay the pre-application process. The requirement is imposed even if the condemning authority is not taking the site slated for the proposed generating facility but is

---

[1] All of the views expressed in IPPNY's comments do not necessarily represent the positions of each of our members. Since IPPNY represents a broad spectrum of companies, we anticipate some of our members also may submit comments on their own.

instead taking a small piece of land, say for example, any part of a substation or transmission line. It is overkill to require the condemning authority to identify entirely new sites if only a small piece of land is being acquired. If there are properties available but the authority does not want to resort to eminent domain for a host of reasons, the developer risks having its application denied because there may be a preferable site that exists and it is theoretically "available." Accordingly, the wording should be revised to provide that if the authority is partnering with the applicant to condemn the proposed site location, then the applicant would not be deemed a private facility applicant. In this instance, the authority appears prepared to use eminent domain on a large scale and it would not be unreasonable to require it to use the power for an alternate site location.

Section 1000.2(ah) – In the fifth line, replace the word "ensures" with "facilitates." In the sixth line, replace the word "results in" with the word "facilitates." In the first instance, the regulation appears to require that the PIP guarantee that "communication between stakeholders and an applicant" occurs. Past Article X experience makes clear that some stakeholders will refuse to participate in a PIP in order to deprive an applicant of the claim that it implemented an effective PIP. An applicant is in no position to force stakeholders to listen to its arguments in support of a project. Similarly, in the second instance, an applicant cannot forcibly educate the public. In both instances, the applicant, and the Department of Public Service Coordinator, can only facilitate communication and education.

Section 1000.2(ai) – This definition was not proposed during the stakeholder process. The proposed definition excludes land owned by the specified municipalities that may not be used by motor vehicles but are held out for the use of the public such as areas that are accessible by foot and land underwater. Projects typically place interconnections in the subsurface of these public rights-of-way and there is no reason to exclude them. The wording of the statute does not restrict public rights-of-way to those areas traversed by motor vehicles.

Section 1000.2(ar) – The definition of Study Area is not clear for large facilities in highly urbanized areas. Does the one-mile radius apply in a highly urbanized area, no matter what size of the facility? Or, does the larger five mile radius apply for a large facility in a highly urbanized area? If the latter, the cost of preparing a five mile radius study in an area such as New York City would be prohibitive. It would also be unnecessary given the complexity and density of the existing land uses and the existence of zoning for industrial facilities. There is no rational reason to study land uses in Staten Island for a facility located in Manhattan. This comment also pertains to Section 1001.3(a)(5).

As to the five mile radius itself, at least seven Article X applications used much smaller radiuses. (IPPNY did not have reasonable access to the other applications.) Attached hereto are the land use excerpts from the stipulations executed in seven Article X proceedings showing that the study radius ranged from "to be determined" to "two miles," with the majority being one mile. Increasing the study radius five-fold without good reason creates unnecessary costs for developers. For instance, the requirement in Section 1001.19(a) would require developers of a wind project to identify locations of all residences within five miles of a proposed wind turbine. Assuming a wind project of 50 turbines located on a 3 mile by 3 mile site (5,800 acres), the five mile radius could result in a study area of 13 miles by 13 miles (41,000 acres), requiring a developer to search and locate all structures in an area seven times larger than the actual site where the turbines are located. For noise requirements, and likely other requirements, a study

area of one mile will provide sufficient information on potential impacts and will not result in unnecessary effort to locate structures in areas where no impacts are expected. The radius should be one mile for all facilities, with the option for the applicant to increase it, based on the particular circumstances attendant to a proposed site, in order to persuade parties to execute a study stipulation.

Section 1000.4(d) – This section requires an applicant to submit a draft PIP for DPS review 150 days before the submission of a Preliminary Scoping Statement ("PSS"). It also requires the applicant to begin outreach efforts at that point. Starting the process so many months before the submission of the PSS is unduly premature because the applicant's proposal is typically not defined enough to present to the public. The public does not want to hear about an inchoate project, a moving target. IPPNY acknowledges the merits of soliciting input from the public to incorporate reasonable design changes early in the project development. But that is the function of the PSS. And, the regulations provide significant outreach and comment procedures for the public during the PSS process. Accordingly, IPPNY recommends that there be no outreach obligations before the PSS is filed.

In addition, repowering projects are provided an accelerated process, six months rather than twelve months, under Section 165.4(b) if they satisfy the applicable statutory criteria. The surrounding community has lived with some sort of facility at the proposed site, presumably over many years. Qualifying for this expedited process means a reduction in air and water impacts from the site as a whole. To reflect the beneficial impacts that a proposed repowered facility can have on the community, the requirement to file a draft plan can be shortened for repowering projects to 45 days before a PSS is filed.

Section 1000.5(l)(2)(xi) – IPPNY commented on the DEC proposed environmental justice ("EJ") regulations. The wording of this section, although couched as "preliminary," simply incorporates the DEC requirement which IPPNY believes frontloads an excessive amount of application material into the PSS. As we stated in our comments to DEC, and which we incorporate in their entirety herein by reference[2], IPPNY objects to forcing an applicant to essentially perform its final air quality and EJ analyses for the PSS. A stakeholder could object to the PSS analyses, force an applicant to revise them for the application (by persuading one of the state agencies to support its argument, as routinely happens) and then object to them again in the hearings. Frontloading too much into the PSS drives up development costs unnecessarily and prolongs the PSS process.

Section 1000.5(l)(4) – It is premature to require an applicant to demonstrate "an ability" to comply with state laws and regulations. All that should be required is what is stated in the next subsection (5), which requires an applicant to provide a preliminary assessment of an ability

---

[2] Written Comments of the Independent Power Producers of New York, Inc., dated March 15, 2012, were submitted by IPPNY's President & CEO Gavin J. Donohue to Mr. Melvin Norris at the Office of Environmental Justice at the New York State Department of Environmental Conservation ("DEC") as part of the official public comment on the DEC's proposed 6 NYCRR Part 487 - Analyzing Environmental Justice Issues ("EJ") in Siting of Major Electric Generating Facilities Pursuant to Public Service Law Article 10.

to comply with local laws. There is no reason to impose a more restrictive standard for state laws in a PSS. Designs are simply not sufficiently developed to provide this level of detail.

Section 1000.5(l)(5) – In the sixth line, the word "preliminary" should be inserted before the word "explanation," as it is premature to require the applicant's complete justification to have a local requirement not applied.

Section 1000.5(l)(6) – It is unreasonable to require an applicant to commit not to seek the power of eminent domain at the PSS stage. The applicant's "plans" should be stated, and if they change, the application could be amended if required.

Section 1000.12(a)(1) The word "material" is missing from the issues that may be considered in a litigated hearing. Section 167.1(A) of the Public Service Law ("PSL") restricts matters to be examined in hearings to "relevant and material." Accordingly, the regulation improperly proposes to relax the statutory standard. The words "and material" should be inserted in the fifth line after the word "relevant."

Section 1001.4(c) – In the fifth and tenth lines, "proposed land use plans" is too vague and imposes an impossible task to discover all possible proposed uses. The words "publicly known" should be inserted before the word "proposed" in both places to assure that only publicly known, proposed uses are evaluated. This change would make the subsection consistent with subsection (f). The same insertion should be made to subsection (i) in the third line, and in subsections (j) and (k).

Section 1001.6(d) – The requirement for the analyses of wind meteorological data, demonstrating adequate wind conditions to support the facility's estimated capacity factor, asks for too much. The meteorological data and estimated capacity factor information are confidential and can be employed by competitors, for example in NYSERDA procurement auctions, to undercut another bidding facility, thereby causing it economic damage. Instead, the wording in the regulation should be revised to allow a wind developer to provide publicly available information about wind conditions in the area and typical wind project capacity factors to support the estimated capacity factor of the facility.

Section 1001.8(a)(3) – Add the words "based upon publicly available information" after the word "facility." The capacity factor of a facility is confidential information. The applicant should not be required to disclose it because it can cause economic damage. In the consultations with the agency staffs provided in the introductory paragraph, the applicant should be accorded the option to develop a reasonable estimated capacity factor without disclosing proprietary information.

Section 1001.8(a)(8) – The information concerning the respective contractual obligations between cogeneration facilities and their steam hosts are, with limited exception, not publicly available. If they were, it would require an applicant to interpret the legal duties and obligations of the respective parties, a highly subjective exercise. The required analysis will be very difficult to perform, if it could be done at all. That part of the analysis should be deleted.

Section 1001.9(c) – The words "and available" should be inserted in the first line after the word "reasonable" to comport with the other regulations and the requirements of Article 10.

Section 1001.14 – Although the proposed regulation deletes many of the requirements for cost information that were contained in the draft regulation circulated in the stakeholder process, the regulation still requires the submission of capital costs by major cost component, and that supporting work papers be supplied upon the demand of any party. Article 10, like Article X its predecessor, does not require that capital cost information be submitted. The Board is required to consider, *inter alia*, "[t]he nature and economics of reasonable alternatives" (PSL 168.4(b)). Private facility applicants, however, are not required to present alternative site locations not owned or under option, and the alternative sources are limited to those that are feasible considering the objectives and capabilities of the sponsor. Thus, capital cost information is not required for that statutory-specified "consideration." Furthermore, this provision is essentially the same as the former Article X requirement. And under that law, capital costs were only relevant if an applicant were an entity subject to the Commission's regulated rate jurisdiction under the PSL. The provision is not applicable to merchant plants who assume the risks of any financial losses, thus insulating ratepayers.

Capital cost information by major category is highly confidential in the competitive generation market. The Commission's trade secret regulations, and adopted by the Board, do not offer unconditional protection. Protection could be denied outright or the Board or the presiding officer could eventually allow disclosure. Whether the Board's decision is meritorious or not, once out the competitive damage is done to the applicant. The applicant's competitors could use the information to undercut the proposed project. The applicant's suppliers could use the information to artificially inflate bids. Once out in the public domain, the applicant cannot collect damages for the economic injury to its business. Thus, the fear of disclosure could deter developers from siting projects in New York. Accordingly, the provision should be deleted in its entirety.

Similarly, 1001.23(f)(1) requires the submission of the operating costs of a cooling water system. This information is also confidential, especially for energy-from-waste projects that include these costs into an operational charge to process a ton of waste. Disclosure of this competitively sensitive information could cause economic damage. The regulation should be revised to eliminate the requirement to disclose the information unless it is required to satisfy a specific statutory requirement. And in that event, the trade secret protection rules should be available.

Section 1001.15(b) – The word "any" should be replaced with the word" typical." Developing data for "any" operating condition would be a costly task and would not contribute materially to the record because the total volume of waste, and that produced under maximum and other typical operating conditions, are relevant for the Board to make its findings.

Section 1001.18(a) and (b) – Insert the word "preliminary" after the word "including" in the introductory clauses of both subsections. These revisions would comport with the Proposed Regulations' intent to require only preliminary data. Also, add the word "applicable" after the word "current" in the third line of (b)(6).

Section 1001.19(b) – Requiring summer and winter ambient data is not only expensive but will lengthen the application preparation process even more than the additional requirements imposed by the Proposed Regulations and the DEC proposed environmental justice regulations. To provide some flexibility and cost containment, an applicant should be allowed to measure and

evaluate the usually quieter winter ambient conditions and make reasonable assumptions concerning the summer ambient.

Section 1001.19(c) – The requirement to evaluate amplitude modulated ("AM") sound during construction is unreasonable, according to the noise consultant advising IPPNY. He advises that AM only occurs during operation. The words "and amplitude modulated sound" should be deleted in the third line.

Section 1001.19(e) – Definitions for two terms are required to avoid unnecessary confusion and litigation. Insert "as defined by ANSI S12.9 Part 4, Annex C" after "prominent discrete (pure) tones" in line 3, and insert "as defined by ANSI/ASA S12.2" after "significant levels" in line 6.

Section 1001.19(f)(1) – The L90 statistic being required appears intended to be a measurement of the "background" noise level. To clarify this, in the first line, the word "background" should be inserted before the word "noise." The same change should be made in paragraphs (2) and (3) in this section.

Section 1001.19(f) – In order to provide data on average or typical noise levels, IPPNY recommends adding the following three paragraphs:

> (7) Daytime ambient average noise level – a single value of sound level equivalent to the energy-average ambient sound levels (Leq) during daytime hours (7 am – 10 pm); and
>
> (8) Typical facility noise levels - the noise level from the proposed new sources modeled as a single value of sound level equivalent to the level of the sound exceeded 50% of the time by such sources under normal operating conditions by such sources in a year (L50).
>
> (9) Typical future noise level during the daytime period - the energy-average ambient sound level during daytime hours (Leq), plus the noise level from the proposed new sources modeled as a single value of sound level equivalent to the level of the sound exceeded 50% of the time by such sources under normal operating conditions by such sources in a year (L50).

Section 1001.21(r)(1) – Insert the word " preliminary" before the word "engineering" in the first line.

Section 1001.22(i) – The term "facility site" could be interpreted to require wetland delineations over a much larger area than is warranted. The terms "facility site, the interconnections, and adjacent properties within 100 feet" should be replaced with the words "areas within 100 feet of those ground areas proposed to be physically disturbed during construction or operation of the facility and the interconnections."

Section 1001.25(d)(5) – Insert the words "if any" after the word "agreements" in the first line. At the time the application is filed, these agreements may not have been finalized. It would be unreasonable to allow an entity to control the applicant's ability to comply with Article 10 filing requirements by delaying the consummation of an agreement. As is typical of certificates

issued under Article X, the finalization of these agreements could be a condition of any Article 10 certificate.

Section 1001.30(c) – The provision requires the provision of information related to the determination of radiological impacts and nuclear safety that is within the exclusive jurisdiction of the Nuclear Regulatory Commission ("NRC"). The restriction in the proposed wording, however, does not go far enough. Even though parties cannot litigate issues within the jurisdiction of the NRC, it should be supplemented by stating that the Board will not use the information to make findings under Article 10. Otherwise it becomes a very expensive and risky black box for an applicant when deciding whether to propose a nuclear plant in New York State, and start the Article 10 process, not knowing if the Board will overstep its jurisdictional bounds at the end of the Article 10 process.

Section 1001.36(a)(1) – Delete the word "identifying" in the fourth line and insert the following in its place: "a preliminary plan for." It is premature to identify with specificity who will construct, own and operate the pipeline facilities. These arrangements typically evolve over the course of licensing as the applicant can achieve more advantageous economic terms if it appears that certification is proceeding to a successful conclusion. Restricting the applicant's options so early in the process serves no useful purpose.

Sections 1001.36 (a)(6) and 1001.37(d) – There is no requirement in Article 10 for the Board to make findings on the facility's impact on wholesale gas prices and fuel oil wholesale supplies and prices in the affected region. As to gas, PSL 164.1(b)(7) requires information about the facility's fuel supply but not about prices. As to oil, PSL 164.1(D) also requires information on the facility's supply, and certainly nothing about prices. Both provisions do not require regional analyses. During the complex negotiations on the drafting of Article10, IPPNY's understanding was that provisions on regional supplies and prices were not intended to be included in the Article 10 law.

Section 1001.39(f) – Insert the word "preliminary" before the word "description" so the requirements in the subsection are consistent. It is premature to require this degree of finality as these arrangements are typically made during the course of the certification proceeding and thereafter. The applicant can obtain more advantageous terms as a certification appears to be heading to a successful conclusion. As was the practice under Article X, the final arrangements/agreements can be submitted in the compliance filing.

Dated: Albany, New York
May 25, 2012

ATTACHMENT

19 NYCRR, Parts 600.4 and 600.5

CEQR Technical Manual (2001), Sections 3A, 3D and 3H.

Publicly available waterfront park development plans regarding redevelopment along the Greenpoint/ Williamsburg East River waterfront between North 7th street and Quay Street (including plans for new parkland, athletic fields, and a proposed "Monitor" park/museum site)

LAND USES

2. The Application will include a study of the land uses in the vicinity of the Project (Study). The land use Study area for the Project site will include a 1-mile radius, as measured from the Project stack location. The Study will include:

(a) A map of all existing land uses within the Study area, as well as within a block of all interconnections to the extent the interconnections are outside the Study area;

(i) The map referenced herein will identify property lines, as well as the Project's relationship to adjacent properties, land uses and land use plans using local land use planning resources; and

(ii) A separate larger scale map of all properties within 1000 feet of the Project site boundary, showing land use, tax parcel number, and owner of record of each property (based on municipal tax assessor office records) shall also be included.

(b) A map of existing zoning districts within the Study area, including a description of the permitted uses within each zoning district, and documentation as to special use permits or zoning use variances issued by the Board of Standards and Appeals for residential use. The analysis will also include the Zoning Resolution's Proposed Brooklyn Loft Text Amendment;

(c) A map of all publicly known proposed land uses within the Study area, gleaned from consultation by TGE with, and a timely response from, New York City Department of City Planning, Brooklyn Chamber of Commerce, New York City Economic Development Corporation, Brooklyn Development Corporation, Office of Borough President and Community Board 1, including information obtained during TGE's public involvement process or from other sources;

(d) an aerial ortho-photograph of the Project area at a scale suitable for discerning land use details.

(e) In accordance with 16 NYCRR Part 1001.3(b)(1)(i), a qualitative assessment of the compatibility of the Project with existing and approved land uses within the

STIPULATION NO. 5: LAND USES AND LOCAL LAWS

LAND USES

1. The application to be submitted will include a study of the land uses in the vicinity of the Project (Study). The Study will include:

   (a) a map of all existing land uses within a two-mile radius of the Project site;

   (b) a map of existing land use zones within a two-mile radius of the Project site, including a description of the permitted uses within each zone;

   (c) a map of all publicly known proposed land uses within a two-mile radius of the Project site, gleaned from interviews with State and local planning officials, from the applicant's public involvement process, or from other sources;

   (d) a qualitative assessment of the compatibility of the Project with existing, potential and proposed land uses, and local and regional land use plans, within a one-mile radius of the Project site;

   (e) a qualitative assessment of the compatibility of roadways to be constructed, if any, and all gas, electric, water, wastewater, or other types of off-site interconnections or improvements required to serve the Project, with existing, potential and proposed land uses within a one mile radius of such improvements: and

2. In accordance with Section 1001.7(b)(2)&(3) of the Rules of the Siting Board, the application to be submitted will include a description of the financial resources available to restore any disturbed areas of the Project site in the event the Project is abandoned, cannot be completed, or is decommissioned. These Rules also require the applicant to submit a plan for the decommissioning of the Project site. The application to be submitted will include:

   (a) a statement of the performance criteria proposed for site restoration or decommissioning;

   (b) a discussion of why these performance criteria are appropriate; and

   (c) a demonstration that the financial resources available for restoration or decommissioning are adequate to restore the site to the condition specified in the performance criteria.

3. The application will include a summary of the applicant's ASTM Phase I Environmental Site Assessment for the Project site.

STIPULATION NO. 5: LAND USES AND LOCAL LAWS

LAND USES

1. The application to be submitted will include a study of the land uses in the vicinity of the Project (Study). The Study will include:

   (a) a map of all existing land uses within a two-mile radius of the Project site;

   (b) a map of existing land use zones within a two-mile radius of the Project site, including a description of the permitted uses within each zone;

   (c) a map of all publicly known proposed land uses within a two-mile radius of the Project site, gleaned from interviews with State and local planning officials, from the applicant's public involvement process, or from other sources;

   (d) a qualitative assessment of the compatibility of the Project with existing, potential and proposed land uses, and local and regional land use plans, within a one-mile radius of the Project site;

   (e) a qualitative assessment of the compatibility of roadways to be constructed, if any, and all gas, electric, water, wastewater, or other types of off-site interconnections or improvements required to serve the Project, with existing, potential and proposed land uses within a one mile radius of such improvements; and

2. In accordance with Section 1001.7(b)(2)&(3) of the Rules of the Siting Board, the application to be submitted will include a description of the financial resources available to restore any disturbed areas of the Project site in the event the Project is abandoned, cannot be completed, or is decommissioned. These Rules also require the applicant to submit a plan for the decommissioning of the Project site. The application to be submitted will include:

   (a) a statement of the performance criteria proposed for site restoration or decommissioning;

   (b) a discussion of why these performance criteria are appropriate; and

   (c) a demonstration that the financial resources available for restoration or decommissioning are adequate to restore the site to the condition specified in the performance criteria.

3. The application will include a summary of the applicant's ASTM Phase I Environmental Site Assessment for the Project site.

STIPULATION NO. 5: LAND USES AND LOCAL LAWS

LAND USES

1. The application to be submitted will include a study of the land uses in the vicinity of the Project (Land Uses Study). The Land Uses Study will include:

   (a) a map of all existing land uses within a one-mile radius of the Project site;

   (b) a map of existing land use zones within a one-mile radius of the Project site, including a description of the permitted uses within each zone;

   (c) a map of all publicly known proposed land uses within a one-mile radius of the Project site, gleaned from interviews with State and local planning officials, from the applicant's public involvement process, or from other sources;

   (d) a qualitative assessment of the compatibility of the Project with existing, potential and proposed land uses, and local and regional land use plans, within a one-mile radius of the Project site;

   (e) interviews with providers of local community services such as fire, police, health care, education, waste removal, and utilities to determine the potential impacts of the proposed Project on the local community;

   (f) a qualitative assessment of the compatibility of roadways to be constructed, if any, and all gas, electric, water, wastewater, or other types of off-site interconnections or improvements required to serve the Project, with existing, potential and proposed land uses within a one mile radius of such improvements;

   (g) aerial photographs of the project area showing land uses in and around the Project site and all interconnection facilities; and

   (h) overlays of the aerial photographs indicating the location of the Project and all off-site interconnection facilities.

2. In accordance with Section 1001.7(b)(2)&(3) of the Rules of the Siting Board, the application to be submitted will include a description of the insurance and financial resources available to restore any disturbed areas of the Project site in the event the Project is abandoned, cannot be completed, or is decommissioned. These Rules also require the applicant to submit a plan for the decommissioning of the Project site. The application to be submitted will include:

STIPULATION NO. 2: LAND USES, LOCAL LAWS AND REAL PROPERTY

LAND USES

1. The Application will include a study of the land uses in the vicinity of the Project (Study). The Study will include:

   (a) A map of existing land uses within a 1-mile radius of the Project site and a map of all properties within 1000 feet of the Project site that shows the current land use, tax parcel number and owner of record of each property and any proposed land use plans for any of these parcels.

   (b) A map of existing zoning districts, Groundwater Management Zones, Agricultural Districts, Wild, Scenic and Recreation Corridors, flood-prone areas, critical environmental areas designated pursuant to the State Environmental Quality Review Act, public fire, school, sewer and water districts, and proposed zoning districts within a 1-mile radius of the Project site, including a description of the permitted/prohibited uses within each zone.

   (c) A map of all publicly known proposed land uses within a 1-mile radius of the Project site, gleaned from interviews with state and local planning officials, from Kings Park Energy's public involvement process, or from other sources.

   (d) A qualitative assessment of the compatibility of the Project, including any off-site staging and storage areas, with existing, potential and proposed land uses, and local and regional land use plans, within a 1-mile radius of the Project site. The qualitative assessment shall include an evaluation of the short and long-term effects of Project-generated noise, odor, traffic and visual impacts on the use and enjoyment of those areas for the current and planned uses.

   (e) A qualitative assessment of the compatibility of above-ground interconnections with existing, potential and proposed land uses within a 1-mile radius of such improvements and within 300 feet from the centerline of such interconnections that are constructed underground.

2. In accordance with Section 1001.7(b)(2)&(3) of the Rules of the Siting Board, the Application to be submitted will include a description of the financial resources available to restore any disturbed areas of the Project site in the event the Project is abandoned, cannot be completed, or is decommissioned. These Rules also require Kings Park Energy to submit a plan for the decommissioning of the Project site. The Application to be submitted will include:

   (a) A statement of the performance criteria proposed for site restoration or decommissioning;

   (b) A discussion of why these performance criteria are appropriate;

STIPULATION NO. 8: LAND USE AND LOCAL LAWS

BACKGROUND

The Project site is located on the former BASF complex in the City of Rensselaer in Rensselaer County, New York. The Application/DEIS to be submitted will include a study of the land uses in the vicinity of the Project. This study will include:

1. An aerial ortho-photograph of the site and adjacent area reflecting current conditions.

2. A site plan showing property lines, easements, and existing and proposed structures; the plan will also show zoning designations.

3. An inventory of all existing land uses abutting the site and within one-half mile radius of the Project site, which will include a map and supporting information to show property lines, property owners, and land uses on properties within 1000 feet of the facility boundary.

4. A description and map of permitted land uses under the existing zoning districts within one-half mile radius of the Project site. Prohibited land uses will also be identified.

5. A plan of all proposed land use changes within a one-half mile radius of the Project site, based on discussions with Local and State officials, the Applicant's public involvement program, or from other sources. Planned land use changes will be shown on the map described in paragraph 3.

6. The Applicant will list the specific applicable local and regional comprehensive land use plans for the proximate municipalities including or directly abutting the site and for Rensselaer and Albany Counties. The Applicant will provide a detailed qualitative assessment of the compatibility of the proposed Project with existing or proposed land uses and land use plans (i.e., local and regional land use plans) within a one-mile radius of the Project site or which would substantively influence the design, operation or environmental impact of the Project. In addition to the general evaluation of land use compatibility, the Applicant will focus on specific sensitive land uses such as the nearby residential areas to the north and along NY Rt. 9J; the Hudson River (as a recreational corridor); Historic Districts; and other specific areas that may be identified during scoping.

   In identifying proposed land use plans, Applicant will consult with:

   - The City of Rensselaer Planning Department
   - Rensselaer County Planning Department
   - The New York State Department of State, Coastal Zone Program

Athens -Case 97-F-1563

STIPULATION NO. 5: LAND USES AND LOCAL LAWS

LAND USES

1. The application to be submitted will include a study of the land uses in the vicinity of the Project site (Study). The Study will include:

(a) A map of all existing land uses within a 2-mile radius of the Project site, expanded as necessary to include identification of major land uses outside that radius (such as the existing nearby nuclear power facilities, Scriba substation and nearby designated recreational land) and including representation on an aerial photograph;

(b) A map of existing land use zones within a 2-mile radius of the Project site, including a description of the permitted uses within each zone;

(c) A map of all publicly known proposed land uses within a 2-mile radius of the Project site, gleaned from interviews with State and local planning officials, from the applicant's public involvement process, or from other sources;

(d) A qualitative assessment of the compatibility of the Project with existing, potential and proposed land uses, and local and regional land use plans, within a 2-mile radius of the Project site; and

(e) A qualitative assessment of the compatibility of roadways to be constructed, if any, and all gas, electric, water, wastewater, or other types of off-site interconnections or improvements required to serve the Project, with existing, potential and proposed land uses within a 1 mile radius of such improvements.

2. In accordance with Section 1001.7(b)(2)&(3) of the Rules of the Siting Board, the application to be submitted will include a description of the financial resources available to restore any disturbed areas of the Project site in the event the Project is abandoned, cannot be completed, or is decommissioned. These Rules also require the applicant to submit a plan for the decommissioning of the Project site. The application to be submitted will include:

(a) A statement of the performance criteria proposed for site restoration and decommissioning;

(b) A discussion of why these performance criteria are appropriate;

(c) A demonstration that the financial resources available for restoration and decommissioning are adequate to restore the site to the condition specified in the performance criteria; and